

Ace Masonry, Inc. and International Union of Bricklayers and Allied Craftsmen Local No. 1 of Tucson, Arizona and Southern Arizona Masonry Association and International Union of Bricklayers and Allied Craftsmen, Local No. 1, Tucson, Arizona, Health and Welfare Trust Fund and Tucson Bricklayers Pension Trust Fund. Cases 28-CA-5763-1 and 28-CA-5763-2

May 17, 1982

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND JENKINS

On September 22, 1980, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding¹ in which it granted the General Counsel's Motion for Summary Judgment and found, *inter alia*, that the Respondent had violated Section 8(a)(1) and (5) of the Act by unilaterally discontinuing payments to trust funds as required by the applicable bargaining contract. It ordered the Respondent to make the required payments. The Board's order was enforced by the United States Court of Appeals for the Ninth Circuit on June 25, 1981.

On August 31, 1981, the Regional Director for Region 28 issued and duly served on the parties a backpay specification and notice of hearing alleging the amounts of payments due the funds. The backpay specification also informed the Respondent of its obligation to file an answer pursuant to Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, and the consequences of failure to file.

The Respondent did not file an answer and was informed by the Regional Office by letter dated September 25, 1981, that, if it did not file one forthwith, a motion for summary judgment would be recommended.

On October 20, 1981, the General Counsel filed Motions for Summary Judgment and Issuance of Board Supplemental Decision and Order. The Board then issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motions should not be granted. The Respondent made no response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, provides in pertinent part, as follows:

(a) *Filing and service of answer to specification.*—The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto; an original and four copies shall be filed with the regional director issuing the specification, and a copy thereof shall immediately be served on any other respondent jointly liable.

* * * * *

(c) *Effect of failure to answer or to plead specifically and in detail to the specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by subsection (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation.

The backpay specification and the letter of September 25, 1981, informed the Respondent of the provisions of Section 102.54, yet the Respondent filed no answer. Therefore, pursuant to Section 102.54 the allegations of the specification are deemed to be admitted to be true and are so found by the Board without taking evidence in support of the allegations.

Accordingly, on the basis of the allegations of the backpay specification herein found to be true, the Board finds the facts as set forth therein and concludes that the amounts due to the funds are as stated in the computations of the specification, and orders the payments thereof by the Respondent to the funds.

¹ 252 NLRB 287.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Ace Masonry, Inc., Tucson, Arizona, its officers, agents, successors, and assigns, shall pay to the joint board of trustees designated to administer the Health and Welfare, Pension and Apprenticeship Training Funds and to the trust fund designated to administer the Southern Arizona Masonry Association Industry Program, the amounts set forth in Appendix A of the backpay specification, attached

hereto, for the period from November 15, 1979, through June 31, 1981, inclusive, plus amounts for the period after June 30, 1981, computed in accordance with paragraph 6 of the backpay specification.²

² Par. 6 reads:

The obligation of the Respondent to make whole employees under the Board order and court judgment will be discharged in part by payment to the funds of the amounts set forth in Appendix A, and thereafter the Respondent shall be obligated to remit to the funds the collective sum of \$2.19 for each unit employee hour worked on behalf of each covered employee employed after June 30, 1981.